

REMARKS:

Applicants respectfully request reconsideration and withdrawal of the outstanding Office Action rejections in view of the foregoing amendments and following remarks.

Rejections under 35 USC § 102(b)

Claims 1 and 3-15 are pending in the application. The Examiner has rejected claims 1 and 2 under 35 USC § 102(b) as being anticipated by Kibler (WO 2004/0088641). Kibler is directed to a synergistic herbicidal mixture of at least one 3-heterocyclyl-substituted benzoyl derivative (component A) and two herbicides selected from a group (component B). In addition, the Kibler mixture can contain a third component of a further herbicidal compound. Kibler teaches that these disclosed compounds can be used for controlling undesirable and/or harmful vegetation. The Examiner argues that Kibler discloses an herbicidal composition containing, among other things, imazamox and acetochlor, which is a chloroactemide compound, thus anticipating claims 1 and 2. Claim 2 has been canceled. Applicants have amended claim 1 so that it is directed to a mixture consisting essentially of imazamox and at least one other enumerated herbicidal compound, and optionally a third component. Thus, the “consisting essentially of” language necessarily prohibits the Kibler component A, which is considered essential by Kibler, from being present in the claimed mixture. In addition, Kibler component B requires that two herbicides be present, wherein the herbicides are selected from imazapyr, imazaquin, imazamethabenz-methyl, imazamox, imazapic and imazethapyr. In contrast thereto, the mixture of claim 1 can contain only one of these herbicides, namely imazamox.

Since Kibler discloses the presence of at least two additional elements which are excluded from the present claims, the present claims cannot be anticipated by Kibler and this rejection should be withdrawn.

Furthermore, Kibler does not render obvious claim 1 in its newly amended form. Kibler does not provide any guidance or articulated reason that the herbicidal mixture will work without component A and/or without one compound of Component B. To the contrary, Kibler teaches how to “increase the activity and/or selectivity of the herbicidally active 3-heterocyclyl-substituted benzoyl derivatives of the formula I [(component A)]...[by developing] the mixtures defined at the outset” (see p.2, ll. 33-39). Thus, Kibler teaches away from removing component A from the herbicidal mixture, because the whole objective of Kibler is to improve the activity and selectivity of component A.

In addition, Kibler relates to synergistic mixtures wherein the substituted benzoyl derivatives of the formula I (component A) and a mixture of two herbicides selected from the group of imidazolinones (component B) exhibit a synergistic action. The component C, which might be chloroacetamide, is only an optional component in the mixtures of Kibler. Thus, Kibler does not regard chloracetamide to be responsible for any synergistic activity. This is confirmed by the working examples presented in table 1 to 6 of Kibler, from which it is clear that the synergistic activity relies on the combination of a compound of the formula I with a mixture of two imidazolinone herbicides. Therefore, a skilled person would not have been motivated to provide a synergistic mixture consisting of imazamox, a chloracetamide and a further herbicide of the group C. In this context, it must be noted that imazamox is not

the preferred imidazolinone herbicide of Kibler as can be seen, for example, at p. 19, l. 35, wherein imazapyr and imazethapyr are mentioned as preferred imidazolinones and also from p. 23, beginning at l. 34, wherein the imazapyr and imazethapyr or imazethapyr and imazapic are mentioned as preferred combinations of imidazolinones (see also p. 24 l. 4 and l. 10). Therefore, a skilled person would not have expected from the teaching of Kibler that a herbicide mixture consisting of imazamox and chloroacetamide would achieve a synergistic activity.

The synergistic activity of the mixtures in the present claims is clearly demonstrated by the working examples of the present application, namely the data presented in the tables on pp. 15-22. As can be seen from the data, the application of the herbicide mixtures results in an increased activity which exceeds the activity which was expected from the activity of the solo applications of the herbicides.

In this context, please note that the table on pp. 15-17 related to the herbicidal activity if the imazamox plus metazachlor mixture against grasses and broad leaf weeds is applied in winter. As can be seen from the data, the combination leads to an increased herbicidal activity but not to a significant damage of the crop plant.

The tables on pp. 19-22 relate to solo- and combined application of imazamox, metazachlor, metolachlor and dimethenamid P against *Setaria faberi* and against *Avena fatua* at different application rates. BEYOND is a commercial formulation of imazamox, BUTISAN S is a commercial formulation of metazachlor, OUTLOOK is a commercial

formulation of dimethenamid P (see p. 13, ll. 16 to 20 of the application), while DUAL II MAGNUM is a commercial formulation of S-metolachlor plus benoxacor. Thus, the present invention provides evidence for the synergistic activity of certain chloroacetamides with imazamox plus optionally a safener (here benoxacor). For the reasons explained above, such a synergistic action could not have been expected from the prior art. Therefore, the claimed subject matter is not obvious in view of Kibler.

Based on the discussion above, it is clear that one of skill in the art would not have been motivated to modify Kibler to obtain a herbicidal mixture which reads on the present claims, and therefore, Kibler does not render claim 1 obvious.

Rejections under 35 USC § 103(a)

The Examiner has rejected claims 3-5 under 35 USC § 103(a) as being obvious in view of Kibler (WO 2004/0088641). Claims 3 and 4 depend from claim 1 and limit the chloroacetamide component to at least metazachlor. Claim 5 also depends from claim 1 and is directed to the herbicidal mixture in a liquid or solid carrier. The Examiner argues that Kibler teaches that metazachlor is a chloracetamide and that the herbicidal mixture can be prepared in a liquid or solid carrier, thus rendering claims 3-5 obvious. However, in light of the amendments to claim 1, the Kibler reference has additional deficiencies with respect to claims 3-5. Specifically, Kibler does not disclose that an herbicidal mixture without component A and/ or without one compound of component B can be formulated in a liquid or solid carrier. Kibler also does not disclose that metazachlor alone can make up

component B. Therefore, claims 3-5 are not obvious in view of Kibler and this rejection should be withdrawn.

The Examiner has rejected claims 6-15 under 35 USC § 103(a) as being obvious in view of Kibler (WO 2004/0088641). Claim 6 is directed to a method of controlling undesired vegetation by administering the herbicidal mixture of claim 1. Claims 7 and 8 depend from claim 6 and are directed to the location of the undesired vegetation and the characteristics of the crops. Claims 9 and 10 are directed to the method of treatment wherein the crop being treated is brassica napus. Claims 11-13, and 15 are directed to the method of treatment wherein the herbicidal mixture contains specified components. Claim 14 is directed to the application rate of the herbicidal mixture. The Examiner argues that Kibler teaches that the herbicidal mixture can be used to treat brassica napus, thus rendering claims 9 and 10 obvious. The Examiner argues that Kibler teaches that the herbicidal can contain clomazone, atrazin or cloquintocet, thus rendering claim 13 obvious. The Examiner argues that Kibler teaches an application rate for the herbicidal mixture of 0.2 to 5000 g/ha, thus rendering obvious the application rate in claim 14 of 5 to 2500 g/ha. The Examiner argues that Kibler teaches that imazamox and metazachlor can be combined in the herbicidal mixture, thus rendering claim 15 obvious. The Examiner does not provide any basis for rejecting claims 7, 8, 11 and 12. Claims 6-15 all depend, directly or through linking claims, on claim 1. As discussed above, in light of the amendments to claim 1, the Kibler reference has additional deficiencies with respect to claims 6-15 and does not render them obvious. The obviousness rejection as to these claims should therefore be withdrawn.

New Claims

New Claims 16-18 have been added. These claims are directed to a mixture of imazamox, metazachlor and quinmerac, and a method of using this combination. Written description support for these claims can be found at least at p. 6 (mixture M5 and M5-1).

In view of the foregoing, it is submitted that the present application is now in condition for allowance. Reconsideration and allowance of the pending claims are requested. The Director is authorized to charge any fees or credit any overpayment to Deposit Account No. 02-2135.

Respectfully submitted,

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